Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1998

KIM F. DOUGLASS,

Petitioner,

v.

GENERAL MOTORS CORPORATION,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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2588

QUESTIONS PRESENTED FOR REVIEW

1. If plaintiff asked for court appointed counsel and the Magistrate appointed counsel, should he ask parties to allow him to hear case?

2. Before summary judgment plaintiff wrote a letter to the Magistrate asking for new counsel, and complaining about counsel's conduct, should she have received new counsel?

3. Would Federal Civil Procedure Rule 60(b)(1)(6) or (15) reverse the trial courts judgment?

4. Was Plaintiff denied the opportunity for a fair trial?

5. Since Plaintiff is on Social Security Disability does she have protection under Americans with Disabilities Act?

6. Does the court have a duty to provide competent counsel to plaintiffs?

7. If the Court of Appeals says that a Plaintiff has not submitted evidence supporting why she did not do something at the trial level, does she have the right to submit evidence?

LIST OF PARTIES

Plaintiff Kim F. Douglass is the only Appellant.

General Motors Corporation consists of; Fairfax Assembly in Kansas City, Kansas.

Fort Wayne Truck and Bus in Fort Wayne, Indiana.

General Motors includes General Motors Corporation.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS AND ORDERS BELOW

The district court's Memorandum and Order is not reported in the Official Reports, but is reported at 96-2306-JWL. The district court's judgment was entered on October 30, 1997.

The Tenth Circuit Court of Appeals is not reported in the Official Reports, but is reported at 97-3366. The Order and Judgment was entered on October 21, 1998.

The Tenth Circuit Court of Appeals is not reported in the Official Reports but is reported at 97-3366. The Order denying rehearing was entered on November 17, 1998.

Copies of the district court's October 30, 1997 Order, the Tenth Circuit Court of Appeal's October 21, 1998 order, and the Tenth Circuit Court of Appeals' November 17, 1998 Order are reproduced in the Appendix.

BASIS FOR JURISDICTION

The United States Court of Appeals decided my case on October 21, 1998.

A timely petition for rehearing was denied by the United States Court of Appeals on November 17, 1998, and a copy of the order denying rehearing appears at

Appendix C. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

F.R.C.P., Rule 60 (b)(1)(6)(15)

U.S. Constitution Amendment 5

U.S. Constitution Amendment 7

28 U.S.C. § 1291

28 U.S.C. § 1343(A)(4)

28 U.S.C. § 1391(B)(2)

42 U.S.C. § 12101

Social Security Act

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42 U.S.C. § 2000e-3(a)

42 U.S.C. § 12112(a)

Federal rule of civil procedure Rule 59

42 U.S.C. § 12111(8)

42 U.S.C. § 12188(a)(1)

STATEMENT OF THE CASE

Plaintiff filed for and was granted a court appointed attorney. Before Summary Judgment, plaintiff wrote a letter to the court about counsel and asked for new counsel to be appointed. Her request was denied. Her counsel did not put forth relevant facts that were in his possession in support of her prima facie case.

Defendant was granted Summary Judgment.

Plaintiff appealed and wanted to supplement the record. The appeals Court denied the motion to supplement because plaintiff "did not offer reasons why she could not and did not present her evidence to the district court."

She then wrote a pro se Petition for rehearing, citing the relevant facts of her case that counsel omitted.

Plaintiff qualifies for Social Security Disability and meets the definition of a "qualified individual with a disability under the ADA Act. Plaintiff has the skill, experience and education that satisfy the requirements for assembly work. Plaintiff has worked for defendant for 21 years. These facts satisfy the Disability Discrimination set forth in the Summary Judgment. Triable Issues of fact. The trial court ruled that a plaintiff must show (1) that he or she is disabled under the ADA; (2) that he or she is qualified – with or without reasonable accommodation; and (3) that he or she was discriminated against because of the disability." The court ruled that "plaintiff's medical problems do not substantially impair her ability to work."

Defendant has accommodations available for their employees through a program called ADAPT. (Accommodating Disabled People in Transition.) Plaintiff can work with restrictions. *School Board v. Arline*, 480 U.S. 273 (1987).

REASONS FOR GRANTING THE WRIT

Plaintiff in her petition for rehearing asked for the court to grant her due process under Rule 60(b)(1)(15) of the Federal Rules of Civil Procedure. In the Summary Judgment on page 3 paragraph 1, "The court views the evidence and draws any inference in a light most favorable to the party opposing summary judgment, but that party must identify sufficient evidence which would require submission of the case to a jury." *Cone v. Longmont United Hosp. Ass'n*, 14 F.3d 526 (10th Cir. 1994).

Plaintiff provided her court appointed counsel with over 700 pages of documents and they were so numbered for evidence. Her court appointed counsel did not submit the evidence to the court in support of her prima facie case.

Before Summary Judgment Plaintiff wrote a letter to Judge Rushfelt about how her court appointed counsel was handling her case and asked for her counsel to be replaced. Judge Rushfelt responded to Plaintiff by letter and sent copies to her counsel Mr. James Kunce, and defendant's counsel. He did not remove Mr. Kunce nor did he conduct a hearing to determine if there were triable issues of fact. This legal error by the court denied plaintiff of her Fifth Amendment right to due process.

The gross negligence of her court appointed counsel prejudiced plaintiff and she was denied a fair hearing by the court. *Hazel Glass Co. v. Hartford Empire Co.*, 322 U.S. 237, 238 (1944), *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 106 S.Ct. 2502, 91 L.Ed.2d 202 (1986).

A hearing would have provided the court with sufficient evidence which would have warranted the case to a jury. *Jones v. Unisys Corp.*, 54 F.2d 624 (10th Cir.) 1995. *Celotex Corp. v. Catrett*, 477 U.S. 317, 100 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

Furthermore the circuit court of appeals stated that plaintiff did not offer reasons as to why she did not present her evidence to the district court. Plaintiff advised the district court of the attorneys conduct and requested that he be replaced. She also gave copies of her letter to Judge Rushfelt and a copy of his reply letter to the circuit court of appeals, as well as evidence that satisfied the requirements of the summary judgment. *Petrini v. Howard*, 918 F.2d 1482 (10th Cir. 1990).

A federal appellate court is justified in reversing a judgment on the basis of issues not raised below when, as here, the issues involved are questions of law, the proper resolution of which are beyond reasonable doubt, and the failure to address the issues would result in a miscarriage of justice. *Stahmann Farms, Inc. v. United States*, 624 F.2d 958, 961 (10th Cir. 1980).

The circuit court had the power and the duty to relieve plaintiff of judgment. Federal Rule 59.

Plaintiff has worked for the defendant since 1977 and has the necessary skill, experience, and education that

satisfy the ADA requirements. The ADA focus is on the essential functions of a particular position, not work in general and considers whether a person can work with a reasonable accommodation. EEOC Notice Number 915.

Whereas the SSD act focus is on work in general.

Thus the question becomes does plaintiff have redress under the ADA act while meeting the qualifications for SSD?

The gross negligence of plaintiff's court appointed counsel by not putting forth facts in his possession that would have satisfied the elements of the court's decision in granting summary judgment to the defendant is a violation of Fed. Rule 60(b). *United States v. Morandi* at 673 F.2d 725 (1982).

The misconduct of both James Kunce and Judge Rushfelt as officers of the court have denied plaintiff due process. The act of James Kunce amounts to fraud upon the courts. *Hazel Atlas Glass Co. v. Hartford Empire,* 322 U.S. 237 (1944).

Rule that appellate courts should not consider issues raised for first time on appeal can give way when pure question of law is involved and refusal to consider it would result in miscarriage of justice. *Martinez v. Mathews,* 544 F.2d 1233 (5th Cir. 1976).

CONCLUSION

Plaintiff did present relevant evidence of importance to the circuit court of appeals that could grant her relief under Rule 60. She also presented material to the district court before summary judgment that was of great importance to her case. The circuit court did not address her petition but addressed issues that the plaintiff never raised. Both courts have erred.

The petition for writ of certiorari should be granted.

Respectfully submitted,

/s/ Kim F. Douglass

February 15, 1999

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT PATRICK FISHER
(Filed October 21, 1998)

Kim Faye Douglass,

Plaintiff-Appellant,

v.

GENERAL MOTORS CORPORATION, Kansas City, Kansas plant; Fort Wayne, Indiana, plant,

Defendant-Appellee

No.97-3366
(D.C.No. 96-CV-2306-JWL)
(D.Kan.)

ORDER AND JUDGMENT*

Before BROBY, MCKAY and BRISCOE, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R. App.P.34(f); 10th Cir. R.34.1.9. The case is therefore ordered submitted without argument.

Plaintiff Kim Faye Douglass appeals from the district court's grant of summary judgment in favor of defendant General Motors Corporation on her claims of disability

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3

discrimination and retaliation. We exercise jurisdiction under 28 U.S.C. § 1291, and affirm.

Plaintiff argues on appeal that the district court erred by: (1) failing to consider all of her arguments, failing to consider all of her medical restrictions, and failing to employ the proper frame of reference when determining that her restrictions do not substantially limit her in a major life activity; (2) finding that she is not disabled under the Americans with Disabilities Act: and (3) finding that she failed to show a causal connection between her action of filing equal employment opportunity complaints against defendant while she was working for the defendant in Fort Wayne, Indiana, and defendant's later adverse employment action while she was employed by the defendant in Kansas City, Kansas.

We review the district court's grant of summary judgment de novo. See *Kaul v. Stephen*, 83 F.3d 1028, 1212 (10th Cir.1996). We have carefully reviewed the party's briefs and the record on appeal. We find no error, and affirm for substantially the same reasons stated in the district court's thorough and sound order dated October 30, 1997.

Plaintiff has moved to supplement the record on appeal. Out of twenty-five pages of material, however, she admits that only four were presented to the district court. Evidence not presented to the district court in opposition to motion for summary judgment is generally not considered on appeal because Fed.R. Civ.P.56(e) requires the nonmoving party to go beyond her pleadings and produce relevant evidence in specified form to show that there is genuine issue for trial. See *Allen v. Minnstar*, 8 F.3d 1470, 1474-76 (10th Cir. 1993) (citing *Celotex Corp v.*

Catrett, 477 U.S. 317, 323-25 (1986). Defendant opposes plaintiff's motion, and she offers no reason why she could not and did not present her evidence to the district court. Plaintiff's motion to supplement the record on appeal is therefore denied.

The judgment of the district court is AFFIRMED.

Entered for the Court

Wade Broby
Circuit Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

KIM FAYE DOUGLASS, Plaintiff, V. GENERAL MOTORS CORPORATION, Defendants.	Filed U.S. District Court District of Kansas 97 Oct. 30 PM 3:16 Ralph Deloach CLERK BY _____ Deputy At Kansas City, Ks. Case No. 96-2306-JWL ENTERED ON THE DOCKET DATE 10-30-97

MEMORANDUM AND ORDER

Plaintiff brought a federal disability discrimination claim and a retaliation claim against her employer. The matter is presently before the court on defendant's motion for summary judgment. (Doc. 31). For the reasons forth below, defendant's motion is granted.

I. Facts[1]

Plaintiff Kim Douglass began working for defendant General Motors (GM)* at GM Leeds plant in 1977. In 1991, she transferred to GM's Fort Wayne, Indiana Plant. Before she began working at GM, plaintiff worked as a postal

[1] In accordance with the applicable summary judgment standard, the facts are uncontroverted or related in the light most favorable to plaintiff.

assistant with the United States Post Office, in the personnel department at the Kansas City Police Department, and as a telephone operator for Southwestern Bell. She is a High school graduate and has pursued some college studies. She is nearing completion of the educational requirements she needs to obtain a paralegal certificate. Plaintiff has also worked as a customer service agent for Emery Air Freight, a placement aide with the Kansas City School District, and an intake clerk with the IRS.

In 1984, plaintiff suffered a work-related injury to her right shoulder and neck. Doctors subsequently restricted her from performing work above shoulder level. Over the years plaintiff occasionally aggravated this injury, and at one point was given a medical restriction that required "no reaching pulling, or lifting more than 20 pounds." Plaintiff also suffered from Crohn's disease, an inflammatory bowel impairment which causes diarrhea, bleeding and stomach cramps.

Plaintiff filed a complaint against GM with the Equal Employment Opportunity Commission ("EEOC") in March, 1993 alleging sex discrimination. She filed another EEOC complaint in September, 1993, alleging disability discrimination and retaliation. In September, 1994, she transferred to GM's Kansas City, Kansas plant. Her Supervisors at the Kansas City Plant were unaware of her prior EEOC complaints.[2]

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[2] Plaintiff and defendant relate more detailed factual information in their papers. The court has carefully reviewed these papers and concludes that such other information is not material to the resolution of defendant's motion. The court therefore does not elaborate on the information here.

II. Summary Judgment Standard

Summary judgment is appropriate if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c); *Anthony v. United States*, 987 F.2d 670, 672 (10th Cir. 1993). The court views the evidence and draws any inferences in light most favorable to the party opposing summary judgment, but that party must identify sufficient evidence which would require submission of the case to a jury. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-52 (1986); *Hall v. Bellmon*, 935 F.2d 1106, 1111 (10th Cir. 1991). If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted. *Cone v. Longmont United Hosp. Ass'n*, 14 F.3d 526, 533 (10th Cir. 1994) (citing *Anderson*, 477 U.S. at 249-50). The relevant inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52.

III. Disability Discrimination

The American with Disabilities Act of 1990 ("ADA") makes it illegal for an employer to "discriminate against a qualified individual with a disability because of the disability of such individual." 42 U.S.C. § 12112(a). A qualified individual with a disability is a person with (1) a disability who (2) can perform the essential functions of the employment position, with or without reasonable accommodation. 42 U.S.C. § 12111(8). To prove discrimination, a plaintiff must show (1) that he or she is disabled under the ADA; (2) that he or she is qualified – with or

without reasonable accommodation; and (3) that he or she was discriminated against because of the disability. *See Siemon v. AT&T Corp.*, 117 F.3d 1173, 1175 (10th Cir. 1997). Defendant moves for summary judgment, contending plaintiff has not met her burden to show she is disabled and that she has not met her burden to show she is qualified.

For the purpose of plaintiff's claim, the term "disability" means a physical or mental impairment that substantially limits one or more of (her) major life activities." 42 U.S.C. § 12102(2)(A). In general, three factors should be considered when determining whether an impairment substantially limits a major life activity: (1) the nature and severity of the impairment, (2) the duration and expected duration of the impairment, and (3) the permanent or long-term impact, or the expected permanent or long term impact or long term impact of or resulting from the impairment. *Bolton v. Scrivner*, 36 F.3d 939 (10th Cir. 1994) (citing 29 C.F.R. § 1630.2(j)(2)). Plaintiff claims she is substantially limited from the major life activity of working.[3] *See Bolton v. Scrivner*, 36 F.3d 939, 942 (10th Cir. 1994) (working is a major life activity). "In order to demonstrate that an impairment "substantially limits' the major life activity of working, (plaintiff) must show' a significant restriction in the ability to perform either a class of jobs or a broad range of jobs in various classes as

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[3] Plaintiff does not allege she is substantially limited from any other major life activities.

compared to the average person having comparable training, skill, and abilities." *Simeon*, 117 F.3d at 1176 (citing *Bolton*, 36 F.3d at 942 (quoting 29 C.F.R. § 1630.2(j)(3)(i)). "A class of jobs' includes 'jobs utilizing similar training, knowledge, skills or abilities, within that geographical area (from which the individual is also disqualified because of the impairment.)' " *Siemon*, 117 F.3d at 1176 (quoting 29 C.F.R. § 1630.2(j)(3)(ii)(B)). '(A)' broad range of jobs in various classes 'includes' jobs not utilizing similar training, knowledge, skills, or abilities, within that geographical area, from which the individual is also disqualified because of the impairment.' " *Simeon*, 117 F.3d at 1176 (quoting 29 C.F.R. § 1630.2(j)(3)(11)(c)).

This court had occasion to apply these factors in *Kindle v. Mid-Central/Sysco Food Servs.*, No. 95-2123-JWL, 1996 WL 99766 (D.) Kan. Feb. 2, 1996). In doing so, this court discussed the Tenth Circuit's *Bolton* case in detail:

> The Tenth Circuit considered the above factors in the context of facts similar to those of this case Bolton . . . That plaintiff's claim impairment included pain and numbness in his feet and a limited ability to lift weight. Id. at 943. He presented evidence that he had a nine percent permanent partial disability to his right foot and a twenty-nine percent permanent partial disability to his left foot. Id. He also presented evidence that various doctors declared that he was unfit to return to work, that he could not stand or walk for prolonged periods of time, or lift objects overhead. Id. In analyzing his claim, the Tenth Circuit found that this evidence addressed the nature and severity, duration and impact of plaintiff's impairment, but that it did not address whether plaintiff was significantly

> restricted in his ability to perform a class of jobs (or a broad range of jobs in various classes). Id. at 944. Absent such evidence, summary judgment was proper.

Kindle, 1996 WL 99766, at *7. Like the plaintiff in *Bolton*, the plaintiff in *Kindle* lost on summary judgment because he presented no evidence showing he was restricted from a class of jobs. *Id.*

Plaintiff here cannot survive summary judgment because her claim is indistinguishable in any material way from the claims advanced in *Bolton* and *Kindle*. She has not pointed the court's attention to any evidence of her vocational training, the geographic area to which she has access, the number and type of jobs demanding similar training from which she would also be disqualified, or even the number and type of jobs not utilizing similar training from which she would also be disqualified. Defendant, on the other hand, has pointed the court's attention to uncontroverted evidence of the plaintiff's vocational training and experience. This evidence all supports a finding that plaintiff's medical problems do not substantially impair her ability to work. Plaintiff has completed some college course work. She has almost completed the training necessary to receive a paralegal certificate. She has worked as a postal assistant with the United States Post Office, a worker in the personnel department of the Kansas City Police Department, a telephone operator for Southwestern Bell, a customer service representative for Emery Air Freight, a placement aide with the Kansas City School District, and an intake clerk with the Internal Revenue Service. In light of plaintiff's

failure to adduce any evidence she is substantially limited from the major life activity of working and defendant's substantial and uncontroverted evidence that she is not so limited, defendant is entitled to summary judgment on this claim. *See Anderson*, 477 U.S. at 251-52 (summary judgment proper if evidence "is a one-sided that one party must prevail as a matter of law").

Plaintiff attempts to compensate for her failure to produce evidence of her ability to work by arguing that various statements and conduct by GM prove she is unable to perform a class of jobs. Plaintiff believes GM admitted she is unable to perform any of the thousands of jobs available at GM. The thousands of jobs at GM, plaintiff argues, constitute a class of jobs under the ADA. Therefore, plaintiff believes she is significantly restricted in her ability to perform a class of jobs.

The court rejects plaintiff's argument because plaintiff has not shown GM admitted she is unable to perform any GM job. Plaintiff points to evidence that GM did not allow her to do sit-down work because it had "no sit-down work available." She also points out that GM did not allow her to do work that did not require pushing and pulling. GM points to uncontroverted evidence that the availability of jobs at its plants depends not only on medical restrictions, but also on seniority and other factors as defined in national and local collective bargaining agreements. Despite plaintiff's protestations, the fact that GM had no sit-down work available for her or that it had no work for her that did not require pushing or pulling does not show she is unable to perform the class of jobs at GM. Thus, even if the class of all jobs at GM constituted a

class of jobs for ADA purposes.[4] Plaintiff has not produced sufficient evidence to show she has a significant restriction in her ability to perform the jobs in that class.

Plaintiff is not entitled to ADA protection because she has failed to produce evidence sufficient to create a triable issue of fact that she is disabled. Defendant is entitled to summary judgment on plaintiff's ADA discrimination claim.

IV. Retaliation

The ADA provides, no person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or hearing under this ACT." 42 U.S.C. § 12203. Title VII of the Civil rights Act of 1964 is nearly identical. See 42 U.S.C. § 2000e-3(a). To establish a prima facie case of retaliation under either statute, a plaintiff must show "(1) protected employee action; (2) adverse action by an employer either after or contemporaneous with the employee's protected action; and (3) a causal connection between the employee's action and the employer's

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[4] The court expresses no opinion on whether all jobs at GM or any other large employer constitutes a "class of jobs" for purpose of ADA analysis. *See Siemon*, 117 F.3d at 1176 (While Siemon may be disabled from working in a small percentage of jobs at AT&T, he is not an 'individual with a disability.' Because it is clear that Siemon has fallen far short of alleging he is substantially limited in performing a class of jobs or a broad range of jobs in various classes, we need not determine how large or wide a group of jobs must be to constitute a 'class' for purposes of the ADA.") (emphasis added).

adverse action." *Morgan v. Hilti*, 108 F.3d 1319, 1324 (10th Cir. 1997) (ADA retaliation); *Berry v. Stevinson Chevrolet*, 74 F.3d 980, 985 (10th Cir. 1996) (Title VII retaliation).

Plaintiff has established the first two elements of her prima facie case. She alleges that she engaged in protected activity by filing EEOC charges in September and December, 1993. She alleges she suffered the following adverse action after or contemporaneous with her complaints: denial of overtime wages, refusal to accommodate, discipline for failure to work within medical restrictions, placement on sick leave, denial of workers compensation benefits, and delay in payment of sick leave pay.

Plaintiff has not satisfied the third element of her prima facie case. To establish a causal connection between her protected activity and any subsequent or contemporaneous adverse action, a plaintiff "must show that the individual who took adverse action against her knew of the (plaintiff's) protected activity." *Williams v. Rice*, 983 F.2d 177, 181 (10th Cir. 1993). Plaintiff admits to having no evidence that any of the individuals at GM who took adverse action against her knew she had filed an EEOC complaint. Defendant, on the other hand, offers affidavits from a number of the adverse decision makers stating that they had no such knowledge.

Plaintiff submits one piece of evidence in an attempt to satisfy the causation element, but the court finds that this evidence simply does not support an inference of causation. Specifically, plaintiff submits a letter written to

her by a union shop chairman while plaintiff was working at GM's Kansas City, plant. The shop chairman apparently was associated with the Fort Wayne Plant, because his letterhead shows an Indiana address. The letter explains the status of a number of plaintiff's internal grievances. The letter discusses a grievance settlement wherein the union would request plaintiff to abandon "any and all legal contractual, or EEOC action against General Motors in connection with her employment at Fort Wayne Assembly." Plaintiff contends this language raises an inference that her supervisors at the Kansas City Plant knew she had engaged in protected activity.[5] The court disagrees. First, nothing on the face of the letter indicates anyone in Kansas City other than plaintiff had any knowledge of the letter. Second, the letter's language appears to be boilerplate. Plaintiff's most recent EEOC complaint was filed approximately nineteen months before the letter. It was no longer pending at the time the letter was written, so any request for her to abandon such complaint was moot.

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[5] Although her papers are somewhat unclear, plaintiff may also be arguing that the letter shows her supervisors at the Fort Wayne plant knew she engaged in protected activity. This argument is without merit because the letter was written after plaintiff moved to Kansas City. Of course, the letter does not show that plaintiff's Fort Wayne supervisors knew she had engaged in protected activity. Even if it did, however, it does not show they knew of her protected activity while she worked at Fort Wayne.

Plaintiff has not demonstrated a causal connection sufficient to survive summary judgment on her retaliation claim. Defendant's motion for summary judgment is granted.

IT IS THEREFORE ORDERED BY THE COURT THAT the motion for summary judgment by defendant General Motors (Doc. 39) is granted.

IT IS SO ORDERED.

Dated this 30th day of October, 1997, at Kansas City, Kansas.

/s/ John W. Lungstrum
John W. Lungstrum
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

Kim Faye Douglass,

Plaintiff-Appellant,

v. No. 97-3366

GENERAL MOTORS CORPORATION, Kansas City, Kansas plant; Fort Wayne, Indiana, plant,

Defendant-Appellee

ORDER

Filed November 17, 1998

Before BROBY, MCKAY and BRISCOE, Circuit Judges.

We have before us plaintiff-appellant's pro se "Motion and Memorandum to Reconsider," which we construe as a petition for rehearing. Upon consideration, the petition is denied.

Plaintiff argues, in effect, that her appointed counsel provided ineffective assistance with her claims of disability discrimination and retaliation, and that is why insufficient evidence was presented to the district court to create a triable factual issue to withstand defendant-appellee's motion for summary judgment.

She asks this court to reverse the grant of judgment and allow her to submit evidence in opposition to defendant's motion. This, we cannot do.

" '(T)here is no constitutional or statutory right to ineffective assistance of counsel in a civil case.' " *See MacCuish v. United States*, 844 F.2d 733, 735 (10th) Cir. 1988) (quoting *Watson v. Moss*, 619 F.2d 775, 776 (8th Cir. 1980) (per curiam)). This is true when counsel is appointed. *See Watson* 619 F.2d at 776.

DENIED

Entered for the Court
Patrick Fisher, Clerk

By /s/ Illegible
Deputy Clerk